

DEVELOPMENT VARIANCE

FILE NO.	V20-003
LOCATION OF PROPERTY	236 E. Empire Street
ZONING DISTRICT	R-1-8 Single Family Residence
GENERAL PLAN DESIGNATION	Residential Neighborhood
PROPOSED USE	Development Variance for reduced setbacks and parking from the minimum R-1-8 Single Family Residence Zoning District Standards for a new single-family residence with an FAR of 0.62, and removal of one ordinance-sized tree on a 0.06 gross acre site in the Hensley Historic District
ENVIRONMENTAL STATUS	Exempt per CEQA Guidelines Section 15303 For New Construction or Conversion of Small Structures
OWNER/ADDRESS	Jithender and Rohini Majjiga 21354 Dexter Drive Cupertino, CA 95014
ARCHITECT/ADDRESS	Thornton Weiler Architect 452 Lincoln Avenue Alameda, CA 94501

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

- 1. Project Description.** This Development Variance is to allow for reduced setbacks and parking from the minimum R-1-8 Single-Family Residence Zoning District standards for a new two-story single-family residence with an FAR of 0.62, and removal of one ordinance-sized tree located on a 0.06 gross acre site in the Hensley Historic District.

The existing 684-square foot one-story house with a 684-square foot basement will be demolished, and a new 1,274-square foot two-story house with 637-square foot basement will be constructed. The new house is proposed to be sited on the parcel approximately 10 feet north of the existing location of the house to accommodate tandem car parking in the new driveway. The floor area ratio will increase by 53 percent from 0.33 FAR to 0.62 FAR. The basement will be converted to a future Accessory Dwelling Unit (ADU).

- 2. Site Description and Surrounding Uses.** The subject site at 236 East Empire Street is located on the south side of East Empire Street, at the southwest corner of East Empire Street and North Sixth Street. The triangular shaped 0.06-gross acre site contains an existing

dilapidated one-story single-family residence located as an end lot in the Hensley Historic District. The site is surrounded by a community center across North Sixth Street to the east, single-family houses to the west and north, across East Empire Street, and a surface parking lot beyond the Southern Pacific Railroad tracks to the south. The site has two ordinance-sized trees and one tree will be removed and replaced on site.

3. **Background.** The rezoning of the site, File No. C20-019, from the CN Commercial Neighborhood Zoning District to the R-1-8 Single-Family Residence Zoning District, was approved by City Council on March 30, 2021. An associated Historic Preservation Permit, File No. HP20-004, was heard by the Historic Landmarks Commission on April 7, 2021 and recommended for approval with conditions to the Director of Planning.
4. **General Plan Conformance.** The subject site has a designation of Residential Neighborhood on the Land Use/Transportation Diagram of the Envision San José 2040 General Plan. This designation allows a density of 8 DU/AC and a FAR of up to 0.7 (1 to 2.5 stories). This designation is applied broadly throughout the City to encompass most of the established, single-family residential neighborhoods. The intent of this designation is to preserve the existing character of these neighborhoods by strictly limiting new development to infill projects that closely conform to the prevailing neighborhood development pattern. New projects should complement existing neighborhood conditions in terms of density, average lot size and orientation, and massing of structures, with particular emphasis given to maintaining consistency with other homes fronting onto the public street to be shared with the proposed new project. The development proposal is for one single family house which exceeds 0.45 FAR and will have an FAR of 0.62 on a 0.06-gross acre site. The site will continue to be used for the development of a single-family residence and maintain the residential character of the neighborhood in conformance with the General Plan.
5. **Zoning Ordinance Consistence.**
 - a. **Use.** The subject site is in the R-1-8 Single Family Residence Zoning District. Single family houses are permitted uses in this zone district.
 - b. **Setbacks.** Under the provisions of Section 20.30.200 of the San José Municipal Code, the setback requirements for residences in the R-1-8 Single Family Residence Zoning District are 20 feet from the front, five feet from the interior side property line, 12.5 feet from the street side property line and 20 feet from the rear property line.

The project proposes a new two-story single-family home with an 8.5-foot front setback, 3.0-foot interior side setback, 8.5-foot street side setback, and a 10-foot rear setback. The development proposal for a new house, therefore, would encroach into the required setbacks on all sides and requires a variance from all setbacks as follows:

Setbacks	Minimum Required	Proposed	Encroachment
Front (North at 6th Street)	20-feet	8'-6"	11'-6"
Street Side (West at East Empire Street)	12.5-feet	8'-4" (Existing)	4'-2"

Side (East) parallel to railway tracks	5 feet	3'-0"	2'-0"
Rear (South)	20-feet	10-feet	10-feet

Table 1: Building Setbacks

- c. **Height.** The new two-story house will have an overall height of 23'-3" from the ground level to the top of roof parapet in conformance with the maximum height requirement of 35 feet.
 - d. **Parking Requirement.** Two covered parking spaces are required for a one-family dwelling; The project proposes to provide two tandem open parking spaces on the south side of the house and requires a variance from parking requirement where two covered vehicle parking spaces is the requirement.
5. **Environmental Review.** Under the provisions of Section 15303 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) as stated below, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended.

Pursuant to Section 15303(a), for New Construction or Conversion of Small Structures, of the California Environmental Quality Act (CEQA), the proposed project includes construction of one new single-family residence, where up to three single-family residences are exempt in an urbanized area. The project site is in an urbanized area and is, therefore, exempt under this section.

6. **Variance Findings.** Based on the analysis of the above facts with respect to the Variance findings (Section 20.100.1320), the Director of Planning finds that:
- a. The Development Variance is granted because of special circumstances uniquely applicable to the subject property, including (but not limited to) the size, shape, topography, location, or surroundings, but expressly excluding any consideration of:
 - i. The personal circumstances of the petitioner, or
 - ii. Any changes in the size or shape of the subject property made or occurring while the subject property was situated in the Zoning District in which it is situated at the time of the filing of the petition, regardless of whether such changes were caused by the petitioner or his predecessors in interest, the strict application of the requirements and regulations prescribed in Title 20 of the San José Municipal Code and referred to in Subdivision A of Section 20.100.1300, deprives such property of privileges enjoyed by other property in the vicinity of and in the same zoning district as the subject property, and

Analysis: The subject 2,050- square foot parcel is in the R-1-8 Single Family Residence Zoning District and does not meet the minimum lot size requirement of 5,445 square feet. The project proposes to demolish the existing house and construct a new 1,274-square foot house which will not meet the development setback requirements of the R-1-8 Single Family Residence Zoning District. This development

variance is supported due to the site's unique irregular (triangular) shape and its small 2,050 square feet size.

The lot is located in the Hensley Historic District which was established between circa 1865 and 1918. Per the DPR prepared by the historic consultant, the house was built in 1880. A legal transfer of deed occurred for this lot 18 (block number 17) in 1889 per the historic documents submitted by the applicant. Therefore, the lot is considered legal as the subdivision occurred before the State of California passed the Subdivision Map Act in 1907 and was part of the Original City of San José incorporated in 1850.

The subject triangular shaped 2,050-square foot lot has a front (north) property line along Sixth Street with a width of 13.65 feet, the east side (interior) property line is a sharp angle, parallel to the adjacent railway tracks, for a length of 75.45 feet, rear property line is 72 feet in width and the street side property line, or the lot depth, parallel to East Empire Street, is 47.84 feet. A standard rectangular lot size is required to be 5,445 square feet minimum in the zoning district and the street frontage width per the Subdivision Map Act is required to be 55 feet minimum with a depth of 137.5 feet (2 1/2 times its width) therefore, this lot is a substandard lot in area and street frontage width. The buildable development area available due to the small lot size deducting standard building setbacks on all sides is approximately 140 square feet which is infeasible for the construction of a viable house. With the proposed setbacks as noted under Zoning Section in Table 1 above, the new house's building footprint would be 637 square feet at first floor area and would encroach into the required setbacks on all sides.

Therefore, the location and layout of the house, and the depth of the lot, is such that a new single-family home could not feasibly be constructed that could meet the development standards of the R-1-8 Single Family Residence Zoning District and requires a development variance.

The original house was built with no on-site parking. The new house would be shifted 10 feet to the north to accommodate two tandem open parking spaces, along the rear (south) property line. Since the requirement for a one-family dwelling with two covered parking spaces would require 400 square feet for attached parking area (Parking Ordinance Section 20.90.060) plus the floor area needed for the house, the available 140 square feet outside the required setbacks, as mentioned before, would make it infeasible and if a detached enclosed parking area is proposed, the rear yard area would have to be increased which would further reduce the floor area available for the house. Therefore, the setback requirement cannot be met due to the constraints of size and shape of the lot, as discussed above, and a variance from enclosed parking requirement of two spaces is justified.

- b. The Development Variance, subject to such conditions as may be imposed thereon, will not impair:
 - i. The utility or value of adjacent property or the general welfare of the neighborhood, and
 - ii. The integrity and character of the zoning district in which the subject property is situated.

Analysis: The Development Variance will not impair the general welfare of the neighborhood and will not impair the integrity and character of the Zoning District it is located, in that the Development Variance will allow the subject property to be developed with a new two-story house with a floor area of 1,274 square feet and a 637-square foot basement. The original one-story house had a first-floor building floor area of 684 square feet which is slightly bigger than the new house with a 637 square feet first floor building footprint. The new house will be a two-story and will have a 0.62 FAR which exceeds the minimum required 0.45 FAR, but original balloon framed front façade will be reconstructed for the new house and the new two-story mass will be hidden behind the front façade. The new house will be built in similar wood materials and in similar window style and configuration which will maintain the integrity and character of the site as viewed from public street. A new front porch will be added which will be oriented towards East Empire Street, similar to other such homes in the neighborhood. The added covered porch at the front façade is similarly found in the surrounding neighborhood and the project will not impair the integrity and character or general welfare of the neighborhood.

The original house was built with no on-site parking. The new house would be shifted to the north to accommodate two tandem open parking spaces, along the rear property line. Since the requirement for a one-family dwelling is two covered parking spaces per the Parking Ordinance Section 20.90.060 and Table 20-190, this requirement is not met due to the size and shape of the lot, as discussed above, and a variance from parking requirement is justified in that the residential use will continue and the project will eliminate blight by demolishing a severely deteriorated house and replacement with a new house that will maintain the setback and spacing of the adjacent residential properties and thus maintain the general welfare and value of the neighborhood.

7. **Demolition Permit Considerations.** With respect to the demolition of the existing building, the Director of Planning, Building, and Code Enforcement has considered the following:
- a. The failure to approve the permit would result in the creation of continued existence of a nuisance, blight or dangerous condition;
 - b. The failure to approve the permit would jeopardize public health, safety or welfare;
 - c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
 - d. The approval of the demolition of the building would maintain the supply of existing housing stock in the City;
 - e. Both inventoried and non-inventoried buildings, sites and districts of historical significance will not be negatively impacted
 - f. Rehabilitation or reuse of the existing building would not be feasible; and
 - g. The demolition, removal or relocation of the Building without an approved replacement Building should not have an adverse impact on the surrounding neighborhood.

Analysis: The existing house was constructed in 1880, is listed on the Historic Resources Inventory as a contributing structure but is in a severely deteriorated condition. The old house will be replaced with a new two-story house in similar footprint and with like materials which will be compatible with the surrounding neighborhood. The front façade of

the new house will be reconstructed, and a porch will be added to be more compatible with the neighborhood. The construction of the new house will maintain the housing stock in the City and continue the residential use on site in the Hensley Historic District and will not negatively impact the City Landmark district. The proposed project to demolish the existing and replace with a new house was recommended for approval with conditions by the Historic Landmarks Commission on the April 7th, 2021 public hearing meeting and was found to complement the surroundings. As analyzed in this permit, the demolition with a replacement project would not have an adverse impact on the surrounding neighborhood.

8. **Tree Removal Findings.** Chapter 13.32 of the San José Municipal Code establishes at least one of the following required findings must be made for issuance of a Tree Removal Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
- a. That the tree affected is of a size, type and condition, and is in such a location in such surroundings, that its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010;
 - b. That the location of the tree with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question;

Analysis: Two ordinance sized trees, one 24-inch in diameter Pepper tree and one 24-inch in diameter Redwood tree were surveyed, and one ordinance-sized Pepper tree will be removed because its location is such that it would encroach into the new building footprint and unreasonably restrict new construction and its removal would not significantly frustrate the purposes of Chapter 13.32 of the San José Municipal Code as set forth in Section 13.32.010.

The removal of this tree would require planting of one new 15-gallon tree on site which is required to be planted as a replacement tree on a single-family residential lot. The applicant is proposing to plant one new 15-gallon tree on the same site in approximately the same location to meet the requirement. This is also made condition of approval no. 8 of this permit.

In accordance with the findings set forth above, a **Development Variance** for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement of the applicant to be bound by, to comply with, and do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such permit.

2. **Permit Expiration.** This Permit shall automatically expire four years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** Construction and development shall conform to the conditions in this Development Variance (File No. V20-003) and plans, entitled "236 East Empire Street, San Jose, CA 95112" dated revised April 20, 2021, on file with the Department of Planning Building, and Code Enforcement. If there are inconsistencies among the Permits and the plans, these Permit take precedence.
6. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
7. **Variance and Conformance with Municipal Code.** This Development Variance authorizes setback encroachment of the new house on all sides and provision of tandem open parking spaces rather than the required covered parking provision as shown on the approved plans.
8. **Tree Removals.** No tree larger than 38 inches in circumference, at a height of 54 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning. *One ordinance-sized tree will be removed and replaced with a 15-gallon replacement tree on the same site.*

9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend buildings, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
10. **Conformance to Other Approvals.** This permit can only be implemented in conjunction and in full compliance with all conditions contained in the associated Historic Preservation Permit File No. HP20-004.
11. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, V20-003 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The permittee shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
12. **Public Works Clearance for Building Permit(s):** Prior to the approval of the Building Permits, the applicant will be required to have satisfied all Public Works requirements, as applicable. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/devresources>.
 - a. An encroachment permit is required for construction of new driveway and curb cut.
13. **Fire Code Compliance.** Compliance with all applicable fire and building codes and standards relating to fire and panic safety shall be verified by the Fire Department during the Building Permit process.
14. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.
15. **Building Materials.** All building materials are to be those specified on the approved plan set.
16. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
17. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
18. **Demolition Permit.** A demolition permit may be issued for the project only upon the issuance of a Building Permit for new construction.
19. **Construction/Demolition Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.

20. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
21. **Revocation, Suspension, Modification.** This Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Development Variance Permit was not abated, corrected, or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected, or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **28th day of April 2021.**

Deputy Director for Chu Chang, Acting Director
Planning, Building, and Code Enforcement

Deputy